

ing of its appeal; and so the club was not entitled to legal representation before the Football Association.

The present case has not reached the stage of appellate review on the merits. If that stage is reached the Appeal Board has an unfettered discretion to allow for legal representation [see regulation 30(8) of Regulations 1969...]. Our case concerns the right to appeal to the Appeal Board and the issue narrows down to this: whether the presentation of the appeal may be made by a solicitor on behalf of an aggrieved person. That turns on the true construction of regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967. It is manifest that the regulation gives an aggrieved person a statutory right of appeal. He is the person against whom a decision has been pronounced; he is the person with a legal grievance. Only this person may appeal. It is not open to a stranger to appeal. The language of the regulation is perfectly clear. Now this question must be posed: if he has a statutory right of appeal why cannot his solicitor appeal on his behalf? The regulation is silent on the right to the assistance of counsel. Is that adequate to deprive the aggrieved person of the right to the assistance of counsel? I think not. The considerations requiring assistance of counsel in the ordinary courts are just as persuasive in proceedings before disciplinary tribunals. This is especially so when a person's reputation and livelihood are in jeopardy. If the ideal of equality before the law is to be meaningful, every aggrieved person must be accorded the fullest opportunity to defend himself at the appellate review stage. Where he has a statutory right of appeal and the regulations are silent on the right to the assistance of counsel, he cannot be deprived of such right of assistance. I can find nothing from regulation 13(1) to limit his right. In coming to this conclusion I derived much assistance from the exposition of the law in the three authorities cited. I will allow the application with costs.

Application allowed.

Solicitors: *Bala & Co.*

D'CRUZ v. ATTORNEY-GENERAL, MALAYSIA & ANOR.

[O.C.J. (Syed Othman J.) June 9, 1971]

[Johore Bahru — Originating Motion No. 1 of 1971]

Advocates and Solicitors — Ad hoc admission — "Special qualifications" — Choice of counsel — Extent of — Advocates and Solicitors Ordinance, 1947, s. 8A(2).

Constitutional Law — Right to counsel — Federal Constitution, art. 5(3) — Construction of.

The applicant was charged in the Sessions Court at Johore Bahru with an offence under section 4(c) of the Prevention of Corruption Act, 1961. He had instructed Mr. C.K.G. Pillay, an advocate and solicitor in Johore as his solicitor but, according to his affidavit, "in view of the complexity of the case, he feels that full justice can only be done if Dato David Marshall is instructed by Mr. Pillay to act for him." He applied for the *ad hoc* admission of Dato David Marshall to lead Mr. Pillay in defending him in that case.

A The Attorney-General and the Bar Council objected to the application on the ground that there was nothing to show that Dato David Marshall had the special qualifications or experience mentioned in section 8A(2) of the Advocates and Solicitors Ordinance.

B Counsel argued not only upon the matters set out in the affidavits, but also on the right of the subject to consult and be defended by a legal practitioner of his choice as provided by clause (3) of article 5 of the Constitution which reads:—
" (3) Where a person is arrested he shall be informed as soon as may be of the grounds of the arrest and shall be allowed to consult and be defended by a legal practitioner of his choice." Thus the issue before the court was whether the right to choose here extended to any legal practitioner of any country in the world.

C **Held**, dismissing the application: (1) specifically the Constitution applies to Malaysia. The right given under article 5 cannot be read as extending to any legal practitioner anywhere in the world, regardless whether or not he is qualified to practice here; the right given to the arrested person in the article must be limited to the choice of legal practitioners who are qualified to practise under our law;

D (2) whether or not a practitioner from outside the Federation possesses special qualifications or experience "to do justice in a case" is irrelevant for the purpose of *ad hoc* admission. What is relevant is whether for the purpose of a particular case he possesses special qualifications or experience not available amongst advocates and solicitors in Malaysia. To say that a practitioner, whether in this country or elsewhere, possesses the qualifications or experience to do justice in a case is inimical to our concept of justice. The administration of justice is a matter for the courts and not a matter for any advocate and solicitor in this country or from abroad.

E *Case referred to:—*

(1) *In Re G.G. Ponnambalam* [1969] 2 M.L.J. 263.

ORIGINATING MOTION.

C. K. G. Pillay for the applicant.

C. Paramjothy for the Bar Council.

F *Ahmad Fiaruz bin Dato Sheikh Abdul Halim* (Federal Counsel) for the Attorney-General.

Cur. Adv. Vult

G **Syed Othman J.:** The applicant is being charged in the Sessions Court at Johore Bahru with an offence under section 4(c) of the Prevention of Corruption Act, 1961. He has instructed Mr. C. K. G. Pillay, an advocate and solicitor in Johore as his solicitor but, according to his affidavit,

"in view of the complexity of the case, he feels that full justice can only be done if Dato David Marshall is instructed by Mr. Pillay to act for him".

H He applies for the *ad hoc* admission of Dato David Marshall to lead Mr. Pillay in defending him in that case.

Mr. Pillay says in his affidavit that subject to the court's approval he intends to instruct Dato David Marshall to lead in this case as he was of the view that

I "in the circumstances of this case he possesses the special experience to do full justice to the applicant and to serve the administration of justice, that from instructions which the applicant has given him he is of the view that the case involves important points of law on jurisdiction, procedural matters, interpretation of Statutes and Government regulations, especially relating to the Malaysian navy, as well as matters of division of responsibility between the officers at various levels of the naval organisation and the whole network of the financial control of the Malaysian navy."

I do not think that there can be any argument that Dato David Marshall is a well-known counsel in this part of the world and until the introduction of section 8A of the Advocates and Solicitors Ordinance, 1947 which came into force at the commencement of this year, was a prominent practitioner in the Federation, having been engaged to use the expression of Mr. Pillay in several *causes celebres* in this country. However, by the new provisions only a citizen of Malaysia or a permanent resident in Malaysia can be admitted to practise. Dato David Marshall, being a Singapore citizen and not a permanent resident here, is therefore debarred from practising here. The new provisions still allow a judge to admit

"other persons to be admitted for the purpose of a particular case if he had, in the opinion of the court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and he has been instructed by an advocate and solicitor in Malaysia."

The Attorney-General and the Bar Council are objecting to the application on the ground that there is nothing to show that Dato David Marshall has the special qualifications or experience mentioned in section 8A (2) of the Ordinance.

Mr. Pillay argues not only upon the matters set out in the affidavits but also on the right of the subject to consult and be defended by a legal practitioner of his choice as provided by clause (3) of article 5 of the Constitution.

I shall deal with the specific matters raised in the affidavits, most of which can be said to amount to nothing more than the opinion and belief of the applicant and Mr. Pillay.

The charge against the applicant as shown in the affidavit of the applicant relates to an offence alleged to have been committed at K. D. Malaya, Woodlands, in the Republic of Singapore.

It is obvious from the charge that the question whether or not the Sessions Court has jurisdiction to try an offence committed at K.D. Malaya, Woodlands, in the Republic of Singapore, should be raised as a preliminary point; but I do not think that the point is of such magnitude as to be beyond the reach of an advocate and solicitor in this country.

It is not shown what are the procedural matters and the interpretation of statutes which are within the special qualifications or experience of Dato David Marshall and not within the grasp of the ordinary practitioner in this country.

It is also said that the case involves Government regulations, especially relating to Malaysian navy as well as matters of division of responsibility between the officers at the various levels of the Naval organisation — in fact the whole network of the financial control and expenditure of the Malaysian navy. But there is nothing here to connect even the ordinary qualifications or experience of Dato David Marshall with these regulations. The fact that he has defended many celebrated cases in the Federation does not make him specially qualified or experienced in every other case. It has been known that with the passage of time practitioners specially experienced in a particular field of practice

A degenerate, and the less experienced practitioners become fully experienced. In the case here, it is not even shown that Dato David Marshall has ever served in the Malaysian navy in any capacity in order to establish that he is better equipped than any practitioner in Malaysia in matters affecting the navy.

B I come now to the constitutional right. Clause (3) of article 5 of the Constitution reads:

"(3) Where a person is arrested he shall be informed as soon as may be of the grounds of the arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

C The question that is pertinent to this application is whether the right to choose here extends to any legal practitioner of any country in the world. In considering this question I am grateful to Mr. Pillay for having drawn my attention to *In re G. G. Ponnambalam*.⁽¹⁾ It was argued in that case, as it has been argued in this case before me, that this article gave the accused person the right to be defended by a legal practitioner of his choice. The learned Chief Justice who heard the application rejected this argument. He said at page 265:

"...until he is admitted, no qualified person is a legal practitioner whether under article 5 or section 14 of the Judicature Act. I do not think article 5 can be read as declaring a right regardless of section 14."

E I respectfully agree with this view. If I may add I would say that generally the Constitution applies to Malaysia; by any stretch of imagination the right given under article 5 cannot be read as extending to any legal practitioner anywhere in the world regardless whether or not he is qualified to practise here; the right given to the arrested person in the article must be limited to the choice of legal practitioners who are qualified to practise under our law.

F I would like now to deal with the particular statements which have been deposed in the affidavits of the applicant and Mr. Pillay. The applicant says in his affidavit

"in view of the complexity of the case he feels that full justice can only be done if Dato David Marshall is instructed by Mr. Pillay to act for him."

G Mr. Pillay says in his affidavit

"that he was of the view that in the special circumstances of the case Dato David Marshall possesses the special experience to do full justice to the applicant and to serve the administration of justice."

H There can be no doubt that the affidavit of the applicant must have been prepared with the assistance of his solicitor. Ordinarily I would ignore any view expressed in an affidavit, as an affidavit should relate only to facts and should not contain matters of opinion. But since the view has been expressed in such extravagant form and apparently without considering its implications, I feel constrained to make some observations. I should have thought that it was sufficient in the circumstances of any case to use the word "justice" only, if at all it was necessary to stress the justification of a cause in an application before the judge. The word by itself as one understands it imports full measure. Since there is now the expression "full justice" one wonders whether there will be born such measure of justice as "half justice" or "three-quarters justice."

In the context of the expression appearing in the affidavits, the clear implication is that without the assistance of Dato David Marshall in the case the courts here would be able to do justice up to a certain measure only. It would also seem to suggest that there is not a single advocate and solicitor practising in this country who is capable of assisting the courts in doing justice to the applicant. I disagree with the view that has been expressed in the affidavits. In the first place, I am sure that our courts are quite capable of administering justice whether or not with the assistance of any advocate or solicitor. The matters deposed in the affidavit which Dato David Marshall is alleged to be specially qualified for or experienced in are commonplace and should be within the knowledge of any ordinary practitioner. The corruption legislation has been with us in some form or other for many years and corruption cases are not uncommon here as in another country where a foreign practitioner may be practising. Most of the celebrated cases of corruption which appear in *The Malayan Law Journal* have been decided by our courts. I therefore find it difficult to accept that there is among the large body of advocates and solicitors in this country who live with our laws, not a single one who possesses special qualifications or experience to defend these cases and that a practitioner from another country, who does not live with our laws, is better equipped than the practitioners in this country with such qualifications or experience. In any case, whether or not a practitioner from outside the Federation possesses special qualifications or experience "to

A do justice in a case", whatever that expression is intended to mean, is irrelevant for the purpose of *ad hoc* admission. What is relevant is whether for the purpose of a particular case he possesses special qualifications or experience not available amongst advocates and solicitors in Malaysia. To say that a practitioner whether in this country or elsewhere possesses the qualifications or experience to do justice in a case is inimical to our concept of justice. The administration of justice is a matter for the courts and not a matter for any advocate and solicitor in this country, let alone from abroad. His duty is to assist the courts in the administration of justice. This duty is paramount. It overrides his duty to his client. Although he is at all times required to act in the best interests of his client his duty does not entail him to get his client acquitted of the charge at all costs. It is for him to assist the courts in eliciting the truth and to argue on facts and law. It has been said the result of the cause should be a matter of indifference to him.

D While I have the highest regard for the ability of Dato David Marshall in defending a case, I am unable to form the opinion on what has been shown before me that in this particular case he has special qualifications or experience not available amongst advocates and solicitors in Malaysia.

The application is dismissed.

Application dismissed.

Solicitors: C. K. G. Pillay & Co.